

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC NY
DOCUMENT
ELECTRONICALLY FILED
DOC #: 7302019
DATE FILED: 7/30/2019

RODOLFO CONCEPCION,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

Case No. 16-CV-4714(NSR)

(Related Criminal Action:
Case No. 13-CR-911-02(NSR))

OPINION & ORDER

NELSON S. ROMÁN, United States District Judge

Petitioner Rodolfo Concepcion (“Petitioner” or “Concepcion”) was sentenced to a one hundred (100) month term of incarceration following his guilty plea, pursuant to a plea agreement, to conspiracy to commit Hobbs Act Robbery in violation of Title 18 U.S.C. § 1951, and to brandishing a firearm during and in connection with the Hobbs Act Robbery conspiracy, in violation of Title 18 U.S.C. § 924(c). Petitioner moves, pursuant to 28 U.S.C. § 2255 (“Section 2255”), to vacate, set aside, or correct his sentence following the U.S. Supreme Court’s decision in *United States v. Davis*, 2019 WL 2570623 (U.S. June 24, 2019), which deemed 18 U.S.C. § 924(c)(3)(B) vague and therefore unconstitutional. (ECF No. 1.) In response to the motion, the Government concedes that Petitioner’s conviction for violating 18 U.S.C. § 924(c) has been invalidated and must be vacated. Accordingly, Petitioner’s Section 2255 motion is granted to the extent of setting the criminal matter, Case No. 13-CR-911(NSR), down for a hearing on October 2, 2019, at 10 : 30 a.m., for the purpose of vacating Petitioner’s conviction for violating 18 U.S.C. § 924(c) , and resentencing Petitioner on his conviction to conspiracy to commit Hobbs Act Robbery (the remaining count on his conviction). *United States v. Davis*, 2019 WL 2570623 at

*13 citing *Dean v. United States*. 581 U.S. ___, 137 S.Ct. 1170 (2017).

In accordance with the foregoing, Petitioner's motion is granted. The Clerk of the Court is respectfully directed to terminate the motion, to enter judgment in favor of Petitioner, to terminate the action and close this case. The Probation Department is respectfully directed to prepare and issue a supplemental presentence report in advance of the above scheduled hearing.

Dated: July 30, 2019
White Plains, New York

SO ORDERED:


NELSON S. ROMÁN
United States District Judge